

THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
PUBLIC HEALTH SERVICE  
CENTERS FOR DISEASE CONTROL AND PREVENTION  
NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

convenes the

WORKING GROUP MEETING

ADVISORY BOARD ON  
RADIATION AND WORKER HEALTH

NON-QUALIFYING SEC PETITIONS

The verbatim transcript of the Working  
Group Meeting of the Advisory Board on Radiation and  
Worker Health held in NIOSH, Cincinnati, Ohio on  
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STEVEN RAY GREEN AND ASSOCIATES  
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-- "uh-huh" represents an affirmative response, and "uh-uh" represents a negative response.

-- "\*" denotes a spelling based on phonetics, without reference available.

-- (inaudible)/ (unintelligible) signifies speaker failure, usually failure to use a microphone.

## P A R T I C I P A N T S

(By Group, in Alphabetical Order)

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3 Idaho National Engineering & Environmental Laboratory

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HOWELL, EMILY, HHS  
KOTSCH, JEFF, DOL  
RUTHERFORD, LAVON, NIOSH

## P R O C E E D I N G S

(9:00 a.m.)

WELCOME AND OPENING COMMENTSDR. LEWIS WADE, DFO

**DR. WADE:** This is Lew Wade, and I have the privilege of serving as the Designated Federal Official for the Advisory Board, and this is a work group meeting of the Advisory Board. This particular work group has been asked to focus on the review of SEC petitions that did not qualify. This work group is ably chaired by Dr. Lockey; members: Roessler, Melius, Clawson and Munn. Melius is not with us today I don't believe.

Jim, you're on the phone? Dr. Melius with us on the phone?

(no response)

**DR. WADE:** But we do have Lockey, Roessler, Clawson and Munn here around the table. I would start by asking if there are any other Board members attending via telephone? Any other Board members on the telephone line?

(no response)

1           **DR. WADE:** So we don't have a quorum of the  
2 Board, and we can continue. We'll go around  
3 and introduce ourselves at the table, and then  
4 we'll ask everyone on the phone who wishes to  
5 introduce themselves to introduce themselves.  
6 We'll talk a little bit about phone etiquette,  
7 and then we'll begin.

8           So again, this is Lew Wade. I work  
9 for NIOSH and serve the Advisory Board.

10          **DR. LOCKEY:** Jim Lockey, Chair of this  
11 working group and member of the Advisory  
12 Board.

13          **DR. ROESSLER:** Gen Roessler, member of the  
14 Advisory Board and a part of the working  
15 group.

16          **MS. HOWELL:** Emily Howell, HHS.

17          **MR. ELLIOTT:** Larry Elliott, NIOSH.

18          **MR. RUTHERFORD:** LaVon Rutherford, NIOSH.

19          **MR. CLAWSON:** Brad Clawson, Board member.

20          **MS. MUNN:** Wanda Munn, Board member.

21          **DR. WADE:** And then we'll go out on the  
22 telephone. We'll ask people to introduce  
23 themselves by height, so will the tallest  
24 person please introduce yourself.

25          **MR. KOTSCH (by Telephone):** Jeff Kotsch,

1 Department of Labor.

2 DR. WADE: Good job, Jeff.

3 MS. BREYER (by Telephone): I think Jeff's  
4 got a few inches on me. This is Laurie  
5 Breyer, the SEC petition counselor at NIOSH.

6 DR. WADE: Anybody else out there in  
7 telephone land?

8 (no response)

9 DR. WADE: Well, for the two veterans on the  
10 phone, obviously, mute if you're not speaking,  
11 and when you speak, speak into a handset. Try  
12 not to use the speakerphone. And if anyone is  
13 snoring, we have a very short list of who it  
14 would be, and people will come to your house.

15 Okay, we're ready.

16 **INTRODUCTION BY CHAIR**

17 DR. LOCKEY: Well, last time we met formally  
18 was on November 9<sup>th</sup>, 2006, and I think that was  
19 a very productive meeting. At the end of it  
20 we put together at least a draft outline in  
21 regard to general conclusions and  
22 recommendations. And, Laurie, I don't, you  
23 probably don't have a copy of that available  
24 to you right now, but we do have a copy here  
25 at the working group.



1                   One of the aspects that was left  
2                   unresolved was that there were some SEC  
3                   petitions that had been appealed by  
4                   petitioners. And they had gone based on the  
5                   rules to a special review committee under the  
6                   direction of John Howard. We wanted to see  
7                   what the outcome of that review was. In fact  
8                   that has been completed, and LaVon had sent  
9                   out four letters that were under John Howard's  
10                  signature in regard to the result of that  
11                  external committee review.

12                 I also, unfortunately, at a late date  
13                 asked LaVon to provide the actual petitions  
14                 here, and we have a notebook with those four  
15                 petitions in. So I thought this would give us  
16                 a chance to hear what LaVon has to say about  
17                 that review process, what conclusions were  
18                 drawn. And if there are any other additional  
19                 recommendations we can make in regard to this  
20                 process, we should try to do that today. And  
21                 then that will be the first part of the  
22                 meeting.

23                 And then, Laurie, I think your input  
24                 as well Denise's input as to how we can make  
25                 this process more petitioner friendly and

1 understandable would be very important. That  
2 was our concern. I think a lot of our initial  
3 recommendations are in that direction trying  
4 to make this an easier process for people to  
5 access to it and understand.

6 **MS. BREYER (by Telephone):** Okay.

7 **DR. LOCKEY:** So your input on that will be  
8 very important to us in the second part of  
9 this. So again, thank you for participating.  
10 I hope Denise is able to join us, too.

11 **MS. BREYER (by Telephone):** Thank you.

12 **MR. ELLIOTT:** To make sure we're accurate in  
13 the record, could you add LaVon and Emily to  
14 the list of attendees in your summary? They  
15 were there.

16 **DR. WADE:** Okay, Laurie, I assume you're  
17 staying at a hotel.

18 **MS. BREYER:** I am.

19 **DR. WADE:** Do you have a fax number? I  
20 could try and fax you this draft.

21 **MS. BREYER:** The fax number is listed as 5-  
22 0-9-9-4-3-8-5-6-4, and you can put it  
23 attention to my name, room 1-4-7.

24 **DR. WADE:** So let me repeat, 5-0-9-9-4-3-8-  
25 5-6-4, room 1-4-7.

1                   **MS. BREYER (by Telephone):** Correct.

2                   **DR. WADE:** We'll work on that. I'm not  
3 going to go right this minute because I'd like  
4 to hear what LaVon has to say, but at the  
5 first opportunity I'm going to have this faxed  
6 to you. And then it could be in front of you  
7 and Denise when it's discussed by the work  
8 group. It might help.

9                   **APPEALED SEC PETITIONS**

10                   **MR. RUTHERFORD:** There were four SEC  
11 petitions: SEC 00039, 00040, 00047 and 00054  
12 that the petitioner requested an admin review.  
13 We had determined they did not qualify, and  
14 they suggested the review.

15                   SEC 00039, I think if you look down in  
16 the letter in about the third paragraph, it  
17 was for a statistician at Y-12 from '51 to  
18 '59. And we had actually, we had exposure  
19 monitoring data for individuals that worked  
20 during that period and determined that it did  
21 not qualify. The petition and the actual  
22 letters were sent to the admin review panel  
23 for them to review. And their determination  
24 as you can see in the letter was that we did  
25 not provide enough clarity to the actual

1           petitioners in our decision. And we also,  
2           they felt, did not provide enough clarity to  
3           that review panel as to the basis for the  
4           reason why we disqualified that petition.

5                     If you look -- and actually, after we  
6           reviewed that, and we did our assessment, we  
7           agreed with that. I mean, we didn't agree  
8           with the decision to qualify, that the basis  
9           was there, but we agreed the fact that there  
10          was not enough clarity in our description of  
11          the reason why the petition did not qualify to  
12          that petitioner.

13                    **DR. WADE:** Which one is this?

14                    **MR. RUTHERFORD:** SEC 00039.

15                     The review panel recommended we  
16           qualify it. We did qualify the petition;  
17           however, this is a unique petition. This  
18           petition is actually for an incident. It was  
19           for a, they provided medical evidence of a low  
20           white blood count for a worker that worked  
21           during that '51 to '59 or, yeah, '51 to '59  
22           period. The worker had actually showed a --  
23           make sure I've got the right one -- yes, the  
24           worker had actually had indication of a low  
25           white blood count in 1958.

1                   And that worker was sent to the Oak  
2                   Ridge Institute of Nuclear Studies Cancer  
3                   Research Hospital to Dr. Golding Andrews (ph).  
4                   He was a physician who was doing cancer  
5                   research at the time with radioisotopes. And  
6                   we reviewed all the documentation, the medical  
7                   records, the medical reports and all the, what  
8                   the indication was, was the white blood count,  
9                   he had an indication of low white blood count.  
10                  No indication of when that low white blood  
11                  count started.

12                 The low white blood count continued  
13                 from 1958 all the way through at least 1965 if  
14                 you review the reports. So the white blood  
15                 count, from acute exposure you would typically  
16                 see a drop in the white blood count, and then  
17                 a gradual return of that white blood count.  
18                 So we also looked, we looked at that medical  
19                 evidence. We also looked at the actual  
20                 doctor's reports.

21                 The doctor's reports indicated that  
22                 they did not look at the symptoms and indicate  
23                 that it looked like an acute radiation  
24                 exposure. And these are leading doctors in  
25                 that field that are reviewing that. They

1           actually could not make a determination what  
2           the cause was of that low white blood count.  
3           So eventually this person did end up getting  
4           leukemia in later years and passed away.

5                       We also looked back, we wanted to  
6           review all the incident reports at Y-12 during  
7           that time period. There was a criticality in  
8           1958 as some of the Health Physicists probably  
9           are aware of at Y-12. However, that occurred  
10          at a later date, or actually at -- yes, at a  
11          later date than what the symptoms started for  
12          this individual. So that couldn't have been  
13          the cause. Also, we have well-documented  
14          individuals that were involved in that  
15          criticality at Y-12.

16                      We also looked at other incidents, and  
17          then we looked at the area that the worker  
18          worked in which is we had a specific building,  
19          and we reviewed monitoring data that we had  
20          during the time period. And we found no  
21          indications that would support that, an  
22          incident occurring at Y-12 during that time  
23          period either through the monitoring data or  
24          through incident records.

25                      We also looked at the individual's

1 monitoring records who he had. He was a  
2 monitored individual. He had external  
3 exposure monitoring data. There was a  
4 monitoring reading which was brought into  
5 question by the petitioner of a, it actually  
6 reads 435 millirem and then it's X'd out, or  
7 lined out, and a zero's put in, but it's  
8 written 100 percent light transmission.

9 And there is an explanation at the  
10 bottom where they actually talked to the  
11 individual because apparently the film became  
12 exposed in the process, and they determined  
13 that the 435 millirem was more than likely not  
14 a real reading, and so they gave it a zero.  
15 They actually had a PhD radiobiologist review  
16 this as well, all the information, and the  
17 point was made that even if it were 435  
18 millirem that that would not be a level of  
19 exposure that would cause a reduced white  
20 blood count.

21 So we went through the process and did  
22 not qualify this. However, if you review our  
23 letter sent to the petitioner, and it did not  
24 lay this information out in full detail. It  
25 did not provide the petitioner a good level of

1 understanding of why we weren't qualifying it.

2 And another thing, and I think if you  
3 look at the recommendations that you have  
4 already made, we did not perform a follow-up  
5 call that could have helped that petitioner  
6 understand this a little more thoroughly,  
7 understand this better. We provided all the  
8 information the admin review panel, but on the  
9 direction of our General Counsel, we did not  
10 provide any of our additional reviews that we  
11 had done internally like with the PhD  
12 radiobiologist reviewing the data. We did not  
13 provide that to them.

14 We did not provide some of the other  
15 internal discussions because of by  
16 recommendation of General Counsel that we may  
17 be tainting the review panel by feeding this  
18 information. Which what we determined really  
19 was we need to make sure that all this  
20 documentation and all this decision making is  
21 in the file so when that review panel reviews  
22 it there is no question. It's already there.

23 **MR. ELLIOTT:** Well, it starts with a clear  
24 explanation to the petitioner in the letters  
25 and in our verbal communications as to why



1 we're not qualifying the petitioner. And then  
2 that will serve to aid in a panel review if a  
3 panel review is sought.

4 **MS. MUNN:** Does Counsel still have the same  
5 position with respect to that data?

6 **MR. RUTHERFORD:** You know, I'm not going to  
7 answer for General Counsel.

8 **MS. HOWELL:** I think that with some of  
9 these, with the panel review we have to be  
10 really careful once that procedure is started  
11 about becoming involved because after it goes  
12 to a panel by getting involved at that point  
13 we could interject ourselves into what's  
14 supposed to be a separate proceeding.

15 And so that's the concern that we're  
16 trying to avoid. Hopefully, we can fix things  
17 by starting from a better place and getting  
18 the petitioners all the information that they  
19 need before they would ever get to the panel,  
20 and hopefully, thereby avoid needing to go to  
21 a panel because they'll understand why their  
22 petition may not have qualified.

23 **MR. ELLIOTT:** We don't want our actions to  
24 be perceived as influencing the panel, and so

25 --

1           **MS. HOMOKI-TITUS (by Telephone):** Now if I  
2 could just follow up on what Emily said. The  
3 panel is supposed to be reviewing the  
4 information that was, that John Howard used to  
5 make his decision. So any information that's  
6 kind of discovered or put together afterwards,  
7 it wouldn't be appropriate to give to the  
8 panel.

9           **MS. MUNN:** I guess I'm trying to imagine  
10 why, well, I guess at that time we just simply  
11 were not being as thorough in our information  
12 to the claimant, were we?

13           **MR. RUTHERFORD:** Well, you know, and we  
14 didn't provide, we didn't, we were thorough in  
15 our own internal review, but we did not  
16 document this well and provide this not only  
17 to the petitioner, but if it would have been  
18 documented better, it would have been provided  
19 to the review panel as well.

20           **MR. ELLIOTT:** Our explanation was not clear,  
21 and it was not complete, neither to the  
22 petitioner in my opinion nor was it found to  
23 be complete by the appeal panel in our  
24 documentation.

25           **MS. MUNN:** Didn't know what you had done.

1                   **MR. ELLIOTT:** Right.

2                   **MS. MUNN:** Because the claimant didn't know  
3 what you had done.

4                   **MR. ELLIOTT:** Right. The way I see this we  
5 owe a petitioner an explanation of why we're  
6 not qualifying the petition, and I don't think  
7 that happened fully in this particular  
8 instance.

9                   **MS. MUNN:** In which case even if it had gone  
10 to the panel, the panel would have had that  
11 information, too. Yeah, okay.

12                   **MR. RUTHERFORD:** If you look at the two  
13 questions actually that the panel asked, and  
14 we did not provide information, was what  
15 documentation is there that OCAS' efforts to  
16 obtain records to confirm or refute the  
17 exposure incident on which this petition is  
18 based. We did look for exposure incidents,  
19 but we did not document that. I mean, we  
20 documented it in our professional judgment  
21 review, but there was nothing really else  
22 besides that.

23                               Also, why doesn't the deceased's  
24 medical evidence satisfy the exposure  
25 incident's evidence requirement. And if we

1 would have documented the review from the  
2 radiobiologist and the other information, that  
3 information would have been made available to  
4 that panel during their review.

5 **DR. ROESSLER:** Just for the record, as you  
6 are describing the sequence of events, and you  
7 described the petitioner as the petitioner  
8 went to the physician, maybe this was later.  
9 I thought you said that the person did not  
10 look at the other acute symptoms. I'm  
11 wondering if you meant did not.

12 **MR. RUTHERFORD:** Yeah, what did I say?

13 **DR. ROESSLER:** I thought you said did not.  
14 I just wanted to be sure that since this is on  
15 the record what really did, when the  
16 petitioner presented to the physician in  
17 addition to the low blood count, were the  
18 other symptoms --

19 **MR. RUTHERFORD:** Right, exactly, the other  
20 symptoms of an acute exposure, nausea and so  
21 on, actually, if you look at the discussion on  
22 that, there is evidence later that nausea  
23 occurred, but it was after the low white blood  
24 count was documented. But he had nausea,  
25 headaches. He had ear infections, things like

that, but it was indicated that it did not occur, it was occurring months after the indication of a low white blood count.

MR. ELLIOTT: Not immediately post --

**MR. RUTHERFORD:** Right, it wasn't post, yes, it wasn't as typical, you know, a typical radiation syndrome from a high exposure you would expect.

**MS. MUNN:** More likely symptoms of the developing leukemia.

MR. RUTHERFORD: Which, you know, I can't say that for sure because I'm not --

**MS. MUNN:** No one ever knows, but more likely.

MR. RUTHERFORD: So what we have now though, we have a qualified petition that we are evaluating and what we are doing to give you a feel, we are evaluating incidents that could have occurred during that time period. You know, we went back again in a more detailed evaluation approach of looking at any incidents that occurred during the 1958 time period also looking at the monitoring data during that time period.

And then we are getting a doctor's

1 review again of the medical evidence to  
2 provide us if there's any indication that this  
3 medical evidence would support an acute  
4 radiation exposure. And all of that would be  
5 documented in our evaluation. So this is the  
6 first time that we'll actually be evaluating  
7 an incident, a true incident.

8 **DR. ROESSLER:** So the working group's  
9 function at this point is just to become aware  
10 of what happened, what you're doing to change  
11 the procedures, and we don't really have to  
12 make any decision because the petition will  
13 come up again.

14 **MR. RUTHERFORD:** Uh-huh.

15 **DR. LOCKEY:** I think what we can do is we  
16 can add maybe two points to our recommendation  
17 list. And one point would be that a clear  
18 explanation be provided to the petitioner as  
19 to why their petition did not qualify and that  
20 documentation supporting that decision be made  
21 part of the permanent file.

22 **MR. RUTHERFORD:** Great, agree.

23 **DR. LOCKEY:** Everybody okay with that? So I  
24 think those are two additional things we can  
25 add.

1                   Laurie?

2                   **MS. BREYER (by Telephone):** I think that's  
3                   an excellent recommendation, and I have  
4                   actually an outline of issues, and I think  
5                   communication being one of them. And I think  
6                   that obviously trying to provide everybody a  
7                   clear explanation of why the petition didn't  
8                   qualify and a record to show what we actually  
9                   have done is going to be the most important  
10                  for people who are in the petitioning process  
11                  or going to file a petition to understanding  
12                  what's going on in the process.

13                  Because I think the process in and of  
14                  itself somewhat overwhelms them. You know,  
15                  they're filing a petition and the qualifying  
16                  it, the petition evaluation, and then it goes  
17                  to the Board, then it goes to the Secretary,  
18                  then it goes to Congress. I think they get  
19                  kind of overwhelmed just by the process in and  
20                  of itself. So I think every step along the  
21                  way where we can give them a clear explanation  
22                  of what's happening at that step is needed.

23                  **DR. LOCKEY:** And I think that explanation  
24                  needs to be given at a level that could be  
25                  understood by the petitioner.

1                   **MS. BREYER (by Telephone):** I completely  
2 agree. I think the problem that we have with  
3 SEC is very similar to the comments we see  
4 with the dose reconstructions, at least from  
5 my end, and I don't have a technical  
6 background. So people will try to come to me  
7 to ask questions about these technical issues,  
8 and then I try to get an explanation from  
9 someone who does have a technical background  
10 and try to explain it to them. And the same  
11 way with dose reconstructions.

12                   They just don't understand sometimes  
13 what these things mean. We actually have a  
14 wide level of petitioners, some people who are  
15 much more advanced than others, who are very  
16 active in the program who do understand these  
17 technical issues. And then we have the people  
18 whose spouse or parent may have been working  
19 at one of these facilities back in the early  
20 years and are now deceased, and so they get a  
21 letter explaining we looked back and incidents  
22 and we go into a kind of a technical  
23 explanation, and that means nothing to them as  
24 well, kind of the same issues we have with the  
25 dose reconstructions. And I think that's



1           important to note as well. So it does need to  
2           be in a form I think they can understand.

3           **DR. LOCKEY:** Excellent. Any other comments  
4           about number 00039?

5           (no response)

6           **DR. LOCKEY:** Okay.

7           **MR. RUTHERFORD:** SEC 00040 actually was from  
8           the same petitioner as 00039. This petitioner  
9           actually worked at Y-12 during the early  
10          years, and her spouse worked at Y-12 during  
11          the early years. This second petition is  
12          actually for 1951-'52, and it's for  
13          statisticians that worked, or mathematicians  
14          that worked in Build 9201-3 at Oak Ridge Y-12  
15          plant.

16                 The basis provided by the petitioner  
17                 was that there was inadequate monitoring. We  
18                 reviewed the monitoring data, and we had  
19                 monitoring data for individuals that worked in  
20                 9201-3 and made the determination that the  
21                 petition would not qualify based on a lack of  
22                 monitoring data. The review panel reviewed  
23                 the information and asked some specific  
24                 questions based on our review.

25                         Again, this came down to, in my

1           opinion it came down to how well we documented  
2           our decision and the lack that we had  
3           monitoring data. The questions that were  
4           brought up by the review panel was basically  
5           associated, well, do you have monitoring data  
6           for individuals specifically in 9201-3? Our  
7           review did not lay, did not describe that  
8           clearly. Our review indicated that we had  
9           monitoring data for individuals at Y-12 during  
10          the, you know.

11                 And so it did not specifically go to  
12          that building in our review. However, we  
13          clearly had that data, and if the review, if  
14          it was written properly and had said that we  
15          have monitoring data for individuals that  
16          worked in Building 9201-3 instead of we have  
17          monitoring data at Y-12 during those years, I  
18          think the decision by the review panel would  
19          have been different.

20                 So again, it's providing the  
21          appropriate level of information to the  
22          petitioners and I think following it with  
23          verbal, you know, verbally through phone calls  
24          to the petitioners, explaining everything,  
25          answering any questions, why the petition's

1 not qualifying. And then making sure that  
2 those files, the information and all the  
3 information that you used to come up with that  
4 decision are maintained in that administrative  
5 record.

6 In this one we now have a qualified  
7 petition, but this petition is for a class of  
8 individuals that are already covered through  
9 an existing SEC class. Building 9201-3 is  
10 part of the SEC 26 petition class that  
11 included 1948 to 1957 and a number of  
12 buildings that potentially had thorium  
13 exposures in. So this individual, however,  
14 another problem with this was this petitioner  
15 only worked there for 180 days at the site and  
16 does not meet the 250-day criteria.

17 What we are doing for this petitioner  
18 is the petitioner indicated that DOL did not  
19 recognize some covered employment at K-25 they  
20 had which would possibly make up the  
21 additional 70 days that they would be included  
22 in a class. So what we will end up doing is  
23 closing this petition because there is nothing  
24 more, there's no new information provided by  
25 the petition that would adjust the existing

1 class that we already had at Y-12.

2 But what we're waiting to do right now  
3 is we're waiting on a decision from DOL to get  
4 sent through that regional office to review  
5 their covered employment information to see if  
6 they did have an additional time period at K-  
7 25 which would possibly get them the 250 days  
8 that they need. So that's pretty much it with  
9 SEC 00040.

10 **MS. MUNN:** Did I understand you correctly to  
11 say that this person would be covered under  
12 the existing SEC?

13 **MR. RUTHERFORD:** Yes.

14 **DR. WADE:** Be careful of the words.

15 **MS. MUNN:** Yes.

16 **DR. WADE:** The person would be compensated  
17 under the SEC.

18 **MR. RUTHERFORD:** They are part of that  
19 class. Let's put it that way.

20 **DR. WADE:** They're in that class but they  
21 don't have the 250 days.

22 **DR. LOCKEY:** Unless you add the K-25.

23 **MR. RUTHERFORD:** Unless they add the K-25.

24 **MS. MUNN:** And is the same true of petition  
25 00039?

1           **MR. RUTHERFORD:** Actually, yes, and I didn't  
2 go into that, but petition 00039 actually  
3 received a recommendation or a compensation  
4 decision from the Department of Labor to --

5           **MR. ELLIOTT:** Representing.

6           **MR. RUTHERFORD:** Yeah, yeah. Awarding that  
7 claimant representing and because they were  
8 part of that class; however, that petitioner  
9 would like to proceed with this petition just  
10 to get that evaluation out. So we are  
11 proceeding as, you know... They will not get  
12 any additional compensation, but we are  
13 proceeding.

14          **DR. WADE:** Sometimes closure's important to  
15 people.

16          **MR. RUTHERFORD:** Yes, I understand.

17          **DR. LOCKEY:** Any more comments?

18               (no response)

19          **MR. RUTHERFORD:** SEC 00047, this is for the  
20 NUMEC Apollo Site. This is a petitioner  
21 petitioned on the basis that administrative  
22 workers were potentially exposed due to  
23 releases from uranium processing buildings,  
24 plutonium processing buildings, and that this  
25 administrative staff was not monitored. We

1 reviewed the information, reviewed, and the  
2 petitioner, all of the information provided by  
3 the petitioner is in the binder here.

4 They provided a number of documents  
5 that supported that there were exposures that  
6 occurred during the plant's operations, and  
7 that all the potential exposures that one  
8 could see or they've seen at the time. We  
9 reviewed the information. We had internal  
10 monitoring data and external monitoring data  
11 for the plant workers.

12 As I said we had internal and external  
13 monitoring data for the plant workers. We had  
14 no monitoring data for the administrative  
15 workers, but the administrative workers would  
16 not typically be monitored at a site depending  
17 on where they are. If they're inside  
18 obviously in their plants, they would be  
19 monitored typically, but this was an  
20 administrative building outside of the plants  
21 and would not typically be monitored from a  
22 film badge perspective.

23 Some sites may have, you know, routine  
24 bioassay in later years that they would have a  
25 person come in. So we looked at, okay, we

1 don't exactly have monitoring data for those  
2 administrative staff, do we have an exposure  
3 scenario? We looked at the information  
4 provided. Yes, there was releases from the  
5 plants that occurred during, you know, the  
6 stack releases it.

7 However, all indications were that the  
8 administrative buildings would have received  
9 nothing greater than ten percent of the  
10 exposure concentrations, permissible exposure  
11 concentrations. So we looked at the actual  
12 environmental monitoring data, and then we  
13 also looked at, well, okay, if we need to  
14 bound or can we bound the workers' exposures  
15 based on the data that we have.

16 We've got to be careful, too, that we  
17 don't get into actual evaluation, you know,  
18 where we're evaluating a petition. We're  
19 actually looking at, okay, do they meet the  
20 criteria for qualification to move us into  
21 that next step for detailed evaluation. There  
22 are individuals where they had admin people  
23 that were not monitored, and they thought were  
24 potentially exposed. Yes, the admin people  
25 were not, we couldn't find any records that

1           they were monitored.

2                       However, we also couldn't find  
3           indication that they really should have been  
4           monitored. And that our decision, as well as  
5           we looked at, we had exposure monitoring data  
6           for the maximum, or the people that would  
7           typically be the maximum exposed individuals  
8           and that would be the production workers. And  
9           the workers in the area had internal and  
10          external monitoring data. So we did not  
11          qualify this petition.

12                      Now, the admin review panel's review  
13          of this is not, they did not question our  
14          decision. If you look at their fourth  
15          paragraph down in the letter in 00047, in  
16          response to the petition it was determined  
17          there was inadequate support for the  
18          submission basis by stating that doses for the  
19          members of the proposed class were monitored  
20          and are available.

21                      In the same document, however, OCAS  
22          acknowledged that office employees were not  
23          monitored because they were not in locations  
24          that required monitoring. This apparent  
25          contradiction conveys a confusing mixed



1 message to both petitioner and the review  
2 panel. Consequently, they recommended that  
3 there was not clear justification and we  
4 should qualify the petition.

5 So this came down to, again, providing  
6 appropriate clarity in our letters in  
7 responses to petitioners as well as discussing  
8 it with the petitioners over a phone call I  
9 think would be appropriate. So we have  
10 qualified this petition. We are in evaluation  
11 phase.

12 And since that time period this  
13 petitioner has submitted a second petition,  
14 and we have qualified that petition as well.  
15 This petition was only qualified for the  
16 administrative staff. The second petition was  
17 for the production workers that worked at this  
18 facility. And although the petitioner did not  
19 provide us a basis that would qualify that  
20 petition, and I think this is a good thing  
21 from our standpoint, we reviewed it. And we  
22 were actually, when we looked at other  
23 information, we determined there is another  
24 basis that should qualify that petition.

25 We recognize that during the first

1           three years of operation we had no monitoring  
2           data at all for individuals at that site. So  
3           even though that petition basis, the basis  
4           provided by the petitioner was not a basis for  
5           qualifying that later petition, we had already  
6           recognized that issue and felt it was  
7           appropriate for us to qualify it, qualify it  
8           and help the petitioner to understand what a,  
9           or identify a good basis for that petition.

10          **MS. MUNN:** So you're saying that this claim  
11          falls under the period where no monitoring was  
12          available for anyone?

13          **MR. RUTHERFORD:** Actually, this one did not.  
14          This one, but the later one did. This one we  
15          had monitoring data for people. The reason  
16          why this one qualified by the recommendation  
17          of the admin review panel was we, and I'll say  
18          that we gave mixed messages to the petitioner  
19          in our letter is pretty much the answer or  
20          what the review panel said.

21                 We said they were monitored, and then  
22          we said they weren't monitored. And what  
23          should have been said is individuals that were  
24          in areas where they could receive exposure  
25          were monitored. Individuals that were not or

1           that would not receive exposures that would  
2           warrant monitoring were not monitored.

3           **MS. MUNN:** So let me see if I have the mixed  
4           messages right. If I understand this  
5           correctly, the period for which SEC 00047 was  
6           filed does, in fact, have monitoring data for  
7           the production people.

8           **MR. RUTHERFORD:** Yes.

9           **MS. MUNN:** And that is the basis for the  
10          original refusal of this petition.

11          **MR. RUTHERFORD:** Yes, yes.

12          **MS. MUNN:** There is now a second petition  
13          for a different time period.

14          **MR. RUTHERFORD:** (Unintelligible) time  
15          period.

16          **MR. ELLIOTT:** That includes production.

17          **MR. RUTHERFORD:** Yes, that includes  
18          production workers.

19          **DR. LOCKEY:** And these people?

20          **MR. RUTHERFORD:** Yes. Well, it's mainly  
21          focused on production workers, but it is  
22          actually going to encompass all.

23          **MS. MUNN:** You have a bounding issue for  
24          this one, but you do not have bounding  
25          information for the new period? The new

1 petition?

2 **MR. RUTHERFORD:** Well, I don't want to say  
3 we had it. I'd say at this time we do not  
4 have monitoring data for that earlier period,  
5 and we recognize that as a reason to qualify  
6 it for evaluation. So we're, we will, we're  
7 moving that petition through evaluation now.  
8 That's not to say that we won't come up with a  
9 method for doing dose reconstruction, but it  
10 is clearly a reason to qualify the petition,  
11 no monitoring data.

12 **MS. MUNN:** So the second petition is for an  
13 earlier period than this one.

14 **MR. RUTHERFORD:** It actually encompasses an  
15 earlier period and then up to 1969. I think  
16 it's '69.

17 Laurie, am I correct, '69?

18 **MS. BREYER (by Telephone):** I believe that's  
19 the date, but I'm not a hundred percent sure.

20 **MS. MUNN:** No, I just wanted to clarify that  
21 the new petition is for an earlier time period  
22 than this original one.

23 **MR. RUTHERFORD:** Yes.

24 **MS. MUNN:** Okay, got it.

25 **DR. ROESSLER:** But it seems the pertinence

1 here is not that, but the missed  
2 communication, the lack of good communication.

3 **MR. RUTHERFORD:** Exactly. I probably didn't  
4 even need to throw that in there.

5 **DR. WADE:** What the heck.

6 **MS. MUNN:** Yeah, you did.

7 **MR. CLAWSON:** No, it comes down to clear --  
8 because if this was to come up at a different  
9 time in a later meeting, we...

10 **DR. WADE:** Better to err on the side of more  
11 information.

12 **DR. LOCKEY:** Let me ask you a question. You  
13 had mentioned a number of times that perhaps a  
14 phone call with NIOSH or from NIOSH to the  
15 petitioner after they received their final  
16 recommendation. Are you suggesting that an  
17 additional step be added to your process that  
18 once you send out a final recommendation or  
19 final decision that you follow it up with a  
20 phone call to spend some time with the  
21 petitioner explaining what they have in their  
22 hands?

23 **MR. RUTHERFORD:** Yes, at least attempt to do  
24 that. Because I think that what happens, in  
25 my opinion what happens is when we write these

1 letters, look at how many hands touch these  
2 letters before they actually go out. And  
3 although we try to be clear, we try to relay  
4 the information so anyone could understand it.

5 But still it's touched, everybody  
6 wants their portion, wants it to read a  
7 certain way. And I think different people  
8 will read a letter and may or may not  
9 understand it. And I think it just makes  
10 sense to follow up with a phone call and to  
11 say, okay, I'd like to go over the letter with  
12 you to help you understand the reason we made  
13 this determination. I think that would be  
14 very helpful.

15 **DR. ROESSLER:** Are those phone calls  
16 recorded?

17 **MR. RUTHERFORD:** No, they're not.

18 **DR. ROESSLER:** Notes made maybe?

19 **MR. RUTHERFORD:** Yes, we do the notes.

20 **DR. LOCKEY:** You're not doing them now, or  
21 you haven't done them in the past.

22 **MR. RUTHERFORD:** We have started recently.  
23 Laurie's picked up a few of them and --

24 **MR. ELLIOTT:** These are in instances where  
25 we're saying we're denying it for evaluation.

1           **MR. RUTHERFORD:** Right, we haven't denied  
2           very many petitions of late so, you know, I  
3           think in the future that will be definitely be  
4           something we should incorporate into our  
5           process.

6           **MS. MUNN:** How have those calls gone, the  
7           ones that you've made? Do they seem to have  
8           been helpful for the petitioner?

9           **MR. RUTHERFORD:** Go ahead, Laurie.

10          **MS. BREYER (by Telephone):** I would  
11          definitely say yes. I think that being able  
12          to converse with somebody definitely gives  
13          them a more complete understanding of the  
14          process because it allows them to interact  
15          with us and ask us questions. I think it also  
16          can be perceived as we really do know what  
17          we're talking about.

18                 We have looked at this issue. I think  
19          the problem with letters as with a lot of the  
20          things is that even though it goes through so  
21          many people internally, sometimes people get  
22          it and maybe they don't understand what's in  
23          the letter because everybody who's reviewed  
24          it, we all know what's going on. So sometimes  
25          it's easy to miss things because it makes so

1 much sense to us because we all know what it  
2 means.

3 And then you get a petitioner who has  
4 little understanding of the program, and they  
5 read it, and it doesn't make sense to them  
6 because they don't know much about the  
7 program. Or it just seems like, you know,  
8 sometimes it can be a two- or three-page  
9 letter, and that may look like, you know, they  
10 didn't even spend much time on it. Look, I  
11 only got like a two- or three-page letter in  
12 response.

13 Whereas, when you speak to people on  
14 the phone, and they get to ask you questions,  
15 and you're knowledgeable about the subject,  
16 you know what they're referring to. If they  
17 don't understand something, you're able to  
18 provide them an answer. I think it gives them  
19 a little more confidence, I think, in the  
20 process. And it gives them that ability to  
21 understand in more detail than a letter.

22 And I think the ones we've had so far,  
23 I think the best example is probably the NUMEC  
24 petition that LaVon was just talking about.  
25 That was a petitioner who was not necessarily



1           satisfied with the process in general all the  
2           way back from when he filed an individual dose  
3           reconstruction, and letters and e-mails have  
4           been back and forth with this person. And you  
5           could tell there was just more frustration and  
6           more frustration between e-mails and letters.  
7           And I think once we started speaking with him  
8           on the phone that greatly diminished. I think  
9           he was able to get a better understanding.

10                 Typically, LaVon is on that call,  
11           Denise, myself and Dave Sundin has  
12           participated on those calls as well, and  
13           people are there right there to answer his  
14           questions immediately so it doesn't come  
15           across as a form letter or a kind of a brush  
16           off of his issues. So I think that that's  
17           what he was interpreting from some of the  
18           letters and the e-mails. So I think the phone  
19           calls have been tremendously helpful.

20                 **MS. MUNN:** I would expect them to be, and  
21           I'm glad to hear that because a phone call, in  
22           my view, has two real advantages. The first  
23           is that you know it's a real person you're  
24           talking to. Nothing that you'd get in the  
25           mail is ever a real person. It's a piece of

1 paper. And in this case it sounds as though  
2 you have the real team there so that it's  
3 informing that there are several people  
4 involved.

5 The other wonderful thing is the  
6 ability for instant response to any question  
7 you have. It's so difficult after the fact to  
8 sit down and try to organize your thoughts  
9 into a letter. So much simpler to ask a  
10 question directly at the time it occurs to you  
11 and have someone be able to respond.

12 **DR. WADE:** A third thing, if I might add, I  
13 mean, we have to watch the trap to thinking  
14 that the whole purpose of this is for us to  
15 answer people's questions that we understand  
16 and they don't. It could well be that they're  
17 going to explain things to us that we didn't  
18 understand.

19 **MS. MUNN:** Absolutely.

20 **DR. WADE:** And so I think we need to be very  
21 careful in our words as to how we approach  
22 this. It's not just do you have any  
23 questions, stupid.

24 **MS. MUNN:** No, it's the personal exchange of  
25 information.

1           **DR. WADE:** Yeah, maybe we misunderstood what  
2 they were trying to say to us.

3           **MR. CLAWSON:** You hit it there when you said  
4 the personal aspect because most of these have  
5 been a miscommunication, and to be able to get  
6 real time plus the personal touch of being  
7 able to talk to somebody I think will make it  
8 a lot better. I think that's great that we've  
9 gone that extra route.

10          **DR. WADE:** I would imagine that will come  
11 into this work group's recommendations. I  
12 also think --

13          **MS. BREYER (by Telephone):** I agree with  
14 that.

15                   Oh, go ahead.

16          **DR. WADE:** Please go ahead, Laurie.

17                   (no response)

18          **MS. MUNN:** Your turn.

19          **DR. WADE:** Go ahead, Laurie.

20          **MS. BREYER (by Telephone):** I just wanted to  
21 add to that I agree that this is the personal  
22 touch on the phone communications is so much  
23 better for strengthening the relationship  
24 between the petitioners, or even potential  
25 petitioners, and NIOSH and I think that's

1           important. I think that relationship there  
2           helps build trust and understanding what NIOSH  
3           is doing for the petition whether it qualifies  
4           or it doesn't qualify.

5                   And I think you can see -- I don't  
6           have a chart, but I wish I did have one  
7           prepared, but I just started probably in this  
8           role July of last year and that was right when  
9           I started so I probably didn't start talking  
10          to petitioners until a little bit later. But  
11          if you go back and look at the petitions the  
12          main ones that LaVon has discussed today, you  
13          know, there was very, probably less  
14          communication using phones and other means as  
15          are all the current petitioners because a lot  
16          of the current petitioners that we have that  
17          are in the qualification phase or the  
18          evaluation phase, and I go through and look at  
19          those, those people have had a lot more phone  
20          communication from earlier petitioners.

21                   Like there are very few petitions that  
22          are either in the evaluation phase or in the  
23          qualification phase that either I have not  
24          talked to or Denise has not talked to, and  
25          probably LaVon has talked to a lot more

1 petitioners as well. And so I think we are  
2 improving on that, and I think it's  
3 interesting to look at probably how many post-  
4 communications we had, you know, when the  
5 program first started or when the SEC petition  
6 process really kind of started off and what  
7 we're really trying to do now to talk to  
8 petitioners. Because I think there'd be a  
9 clear difference between the number of phone  
10 communications with somebody either at NIOSH  
11 or Denise in the past and currently.

12 **DR. WADE:** Just an information question. Do  
13 Laurie, Denise and you review the letters then  
14 that go out?

15 **MR. RUTHERFORD:** Yes, we do, and I think  
16 what Laurie said is very important point.  
17 Laurie's been on, and I guess she's been in --  
18 How long have you been in your  
19 position now?

20 **MS. BREYER (by Telephone):** Just about July  
21 of last year, but I would say I probably  
22 started, kicking in and talking with more  
23 people as they started becoming aware of that  
24 role being there, probably a little bit later  
25 in the fall.

1           **MR. RUTHERFORD:** If you look at when these  
2 petitions were first brought in, you know,  
3 this was well before her time, and I think  
4 that the letters, you know, we're trying to  
5 get more information, more quality information  
6 in the letters, and we're also, as Laurie  
7 mentioned the phone communications, in fact,  
8 she's given me another little graph I'm going  
9 to have to add to my list are the number of  
10 phone communications per petition over time.  
11 So I'm going to have to take a look at that.

12           **DR. WADE:** So I think making --

13           **MS. BREYER (by Telephone):** Well, that's  
14 something I could do quickly, LaVon, as well  
15 because I know even in, when I was looking at  
16 the chart the other day and I was putting Xs  
17 by all the people I had talked to, there are a  
18 lot more Xs on the more recent petitions than  
19 there were on a lot of the previous petitions.

20           **DR. LOCKEY:** Well, one of the things we did  
21 at our last meeting in November was recommend  
22 that NIOSH formally institute a policy that 30  
23 days before a final decision is made that they  
24 would make a formal second formal phone  
25 consultation to look at the progress the

1                   petitioner is making.

2                   And I think Lew faxed you that summary  
3                   from that meeting on November 9<sup>th</sup>. Maybe you  
4                   can take a look at that. I think what we'll  
5                   add to our list if the working group concurs  
6                   is that as NIOSH is already doing a, add to  
7                   this a final phone consultation after the  
8                   final letter is sent out denying a petition.

9                   And we'll also put in this a general  
10                  statement that having the SEC petition  
11                  counselors on board is definitely going to  
12                  benefit the whole process in regard to the  
13                  petitioners as two additional points if  
14                  everybody's agreed with that.

15               **MR. CLAWSON:** Do you feel since this is the  
16               very last one or so forth like this that now  
17               you're saying they just take notes on these or  
18               are these actually tape recorded?

19               **MR. RUTHERFORD:** They just take notes. They  
20               do not tape record them.

21               **MR. ELLIOTT:** On what? The close-out  
22               interviews?

23               **MR. CLAWSON:** Yeah, well, the final --

24               **MR. RUTHERFORD:** Phone communications.

25               **MR. ELLIOTT:** You, yourselves, can go into

1 the --

2 **MR. RUTHERFORD:** SEC viewer.

3 **MR. ELLIOTT:** -- SEC viewer, and you can see  
4 petitions. And you will see they're tracked  
5 just exactly like our claims are tracked.  
6 Every time a conversation is held with a  
7 petitioner it's captured in a phone log, and  
8 that's where these things are summarized.

9 **MR. CLAWSON:** Well, I just wanted to make  
10 sure that we were documenting so that later on  
11 they couldn't say, well, I brought this up and  
12 nothing ever happened. That's all --

13 **MR. ELLIOTT:** What I think we need to look  
14 at there is if in these close-out interview  
15 interactions and how we're capturing that in a  
16 phone log. If there's something there that  
17 says to me we should send a letter back, you  
18 know, something that stimulates  
19 correspondence, we haven't done that yet. You  
20 know, to document formally what the  
21 interaction was in the close-out interview and  
22 to respond to questions. I don't believe  
23 we've had one of these close-out interviews  
24 elevate itself to that, requiring that next  
25 level of correspondence to happen, but that



1           could happen.

2           **DR. ROESSLER:** More written documentation of  
3           these interaction sets available is important.

4           **MS. MUNN:** But not necessarily communication  
5           with the claimants after it's happened.

6           Sometimes, you know, if everybody goes away  
7           happy, then we will have done a good job of  
8           communicating what went on. And I would  
9           definitely hesitate to suggest the taping of  
10          this particular kind of interaction. It  
11          really does have a cooling effect for a lot of  
12          people to know that they're being recorded.

13          It's --

14          **MR. ELLIOTT:** Well, we've chosen, and we  
15          can't go there.

16          **MS. MUNN:** Yeah, I think we'd be unwise to  
17          do that.

18          **MR. ELLIOTT:** We can't do that for legal  
19          reasons. We can't do that for pragmatic  
20          reasons.

21          **MS. MUNN:** Yeah, it just doesn't make sense.  
22          Recording notes is by far, in my view, the  
23          better.

24          **DR. LOCKEY:** Larry, when you talk about  
25          close out interview you're talking about after

1                   they've received the final letter? Is that  
2                   what you're talking about?

3                   **MR. ELLIOTT:** After they, yes, after they  
4                   receive our determination of judgment that it  
5                   doesn't meet, doesn't qualify to evaluate.

6                   **DR. LOCKEY:** We can add that, you're adding  
7                   this additional step. There will be a close  
8                   out phone --

9                   **MR. ELLIOTT:** For those petitions which are  
10                  denied I think we should have a close out  
11                  interview once they receive the letter.

12                  **DR. LOCKEY:** We'll call it that, a close  
13                  out.

14                  **MR. ELLIOTT:** It mirrors what we do with a  
15                  claim.

16                  **MR. CLAWSON:** Close out personal --

17                  **MS. MUNN:** Telephone communication.

18                  **MR. CLAWSON:** Yeah, communication because  
19                  I'll be right honest. I've read a whole bunch  
20                  of these, and I deal with this in a lot of  
21                  aspects. And I still get lost and fluttered  
22                  and you guys trying to, what are we trying to  
23                  say here. It is, for us that deal with it  
24                  even on a day-to-day basis, we understand the  
25                  process but for somebody that's walking in out

1 of the street it's, where are they going with  
2 this. So I really do compliment you on the  
3 personal touch if you handle it. I think that  
4 would make it a lot better.

5 **MR. ELLIOTT:** One more to go.

6 **MR. RUTHERFORD:** SEC 00054. This is  
7 actually a petition that was a multiple site  
8 petition that the admin review panel reviewed  
9 our decision on this one and concurred with us  
10 that this petition should not qualify.

11 **DR. WADE:** So you're batting .250 here.

12 **MR. RUTHERFORD:** Actually, no, no --

13 **MR. ELLIOTT:** It's much better than that.

14 **MR. RUTHERFORD:** It's much better than that.

15 **DR. WADE:** I think it's also an interesting  
16 topic for the work group, the admin review  
17 panel. You've seen their work now, and you  
18 comment upon it or suggest changes.

19 **DR. ROESSLER:** I was just going to say. I  
20 think we owe a lot to this panel. They're on  
21 the ball. They're helping the processing.  
22 They're identifying things --

23 **MS. MUNN:** Very, very detailed, and that's  
24 great.

25 **DR. ROESSLER:** Acknowledge their

1 contribution.

2 **MS. MUNN:** Absolutely. Thanks to the panel  
3 that clearly do a thorough job.

4 **DR. WADE:** I think that's a great deal of  
5 confidence to know that.

6 **DR. LOCKEY:** Well, step forward then.  
7 Laurie, did you get a chance to review the  
8 fax?

9 **MS. BREYER (by Telephone):** That is what I'm  
10 looking at right now. I just picked it up.

11 **DR. LOCKEY:** What I would propose we do is  
12 we'll add four points that we can add to our  
13 recommendations, and I'll add them to the  
14 recommendations that, our draft  
15 recommendations from before. Are there any  
16 other additional points that we should add to  
17 what we had, what our graph of November 7<sup>th</sup>,  
18 November 9<sup>th</sup>, 2006 says?

19 **MS. MUNN:** What are your additional four  
20 points?

21 **DR. LOCKEY:** It would be a clear explanation  
22 as to why an -- I may change the language, but  
23 and I'll send this out for everybody's review  
24 before we finalize the language and then  
25 present it to the Board, a clear explanation

1 as to why an SEC petition has not qualified.  
2 This explanation should be to the petitioner  
3 in language that the petitioner would  
4 understand --

5 **MS. MUNN:** In the letter.

6 **DR. LOCKEY:** In the letter, right.

7 And then the number second --

8 **DR. WADE:** Hey, Laurie, can you hear me?

9 **MS. BREYER (by Telephone):** I can.

10 **DR. WADE:** Could you get a hold of Denise  
11 and get her a copy of that letter because I  
12 think you're going to be on deck in a little  
13 bit. Okay?

14 **MS. BREYER (by Telephone):** Okay.

15 **DR. WADE:** Thank you.

16 Sorry.

17 **DR. LOCKEY:** The second point would be that  
18 there would be support documentation within  
19 the file as to why a petition is denied. So  
20 if there is an appeal made, when it goes to  
21 the NIOSH panel at Howard's headquarters, they  
22 will have the documentation available so they  
23 can follow the process through.

24 The third point would be that there  
25 would be a close out personal communication

1 with the petitioner with verbal explanations  
2 as to why the petition had not qualified, and  
3 the fourth is just general for comment that  
4 the SEC petition counselors are going to be a  
5 tremendous asset to potential petitioners in  
6 understanding this process. So we are very  
7 supportive of that, of those positions being  
8 in place. Language, I'll modify that  
9 language.

10 **MS. MUNN:** Yeah, a little verbiage.

11 **DR. LOCKEY:** What I'll do is I'll send that  
12 out to, I'll add that to what we have already,  
13 send it out to the working group, wordsmith  
14 it, comment on it, get it back to me and then  
15 we'll present it at the next Board meeting.  
16 Is that suitable?

17 **DR. WADE:** Yes, fine. We do want to hear  
18 from these young ladies as there might be some  
19 other things.

20 **DR. LOCKEY:** Things that we're not aware of  
21 that we can perhaps be helpful with. Sounds  
22 like it's going much smoother.

23 **MR. ELLIOTT:** I think, you know, as we  
24 evolved in our understanding and in working  
25 with petitioners it became apparent to us that

1 a clear explanation is really where we want to  
2 all be at the end of the day. And we missed  
3 it in these examples you had before you today.

4 **DR. LOCKEY:** It avoids rework and a lot of -  
5 -

6 **MR. ELLIOTT:** And I think if we look back at  
7 some of the earlier ones, we might have been  
8 guilty of such there, too, but we're doing a  
9 much better job now.

10 **DR. WADE:** No matter how well you do it  
11 though the vagaries of communication will be  
12 such that there'll be misunderstandings unless  
13 you can have the immediate feedback with the,  
14 you know, using feedback techniques on the  
15 phone to make sure it works. It's amazing how  
16 two of us can't communicate to each other even  
17 when we speak exactly the same jargon.

18 **DR. LOCKEY:** I find that sometimes I write a  
19 paper, and I go back and read it six months  
20 later, and I'm not quite clear on what I said.

21 **DR. WADE:** One of my favorite newspaper  
22 quotes is an actual quote, was British left  
23 waffles on Falkland Islands. The British left  
24 waffles on Falkland Islands.

25 **DR. LOCKEY:** I had to think about that a

1 second, just think about that a few times.

2 **MR. ELLIOTT:** I really appreciate the  
3 findings of the working group because I've  
4 heard them and as you, I hope you have heard  
5 today we've implemented some of your work  
6 already, so much appreciated your efforts  
7 here. It's made us much better.

8 **MS. MUNN:** Your efforts are appreciated,  
9 too. We understand what you're going through.

10 **DR. LOCKEY:** Should we take a five minute  
11 break?

12 **DR. WADE:** We could. There's one little  
13 question I'd put before you. I think I  
14 mentioned it once before. There has been this  
15 question as to whether or not the names of the  
16 members of the review panel should be made  
17 public, and there's debate on that. I don't  
18 know if this group has any sense of that. I  
19 guess my inclination is to say yes to that  
20 because it is public business; they're public  
21 employees. I don't know if this group had any  
22 strong opinion on that. It sort of falls  
23 within your bailiwick.

24 **MS. MUNN:** How do the panel members feel  
25 about it?



1           **DR. WADE:** I haven't asked them.

2           **MR. ELLIOTT:** Can I pose a counterargument -

3           -

4           **DR. WADE:** Sure.

5           **MR. ELLIOTT:** -- out of just the spirit of  
6           throwing it on the table here. I would argue  
7           that the names not be released. If I were one  
8           of these people, knowing the calls that I take  
9           on a daily basis with petitioners and  
10          claimants, I think these people need to be,  
11          their independence needs to be maintained.  
12          And I guess in that light I'd say their  
13          identity needs to be --

14          **DR. WADE:** See, and I would say, again, that  
15          we should have this debate between us, but we  
16          can have it in front of you as well. I mean,  
17          these are senior government officials. They  
18          understand the nature of their work. They  
19          know how to deal with these things. I just  
20          think on the altar of transparency I would  
21          make this information public.

22          **MS. HOMOKI-TITUS (by Telephone):** Lew, can I  
23          add a comment?

24          **DR. WADE:** Sure.

25          **MS. HOMOKI-TITUS (by Telephone):** And it's

1 not a comment in favor or against whatever you  
2 all decide regarding releasing these people's  
3 names. But I do want to remind you that their  
4 decisions are supposed to be made solely on  
5 the information that was used to make the  
6 decision previously, so I'm not really sure  
7 why the petitioners would need to be in  
8 contact with them.

9 That really could lead to undue  
10 influence on their decision because even if  
11 they're not provided with like a written  
12 statement or some new information, they are  
13 hearing information that wasn't before the  
14 decision maker in this case. So whether you  
15 release the names or not, you're going to have  
16 to be very careful about whether or not these  
17 people can actually speak with petitioners.

18 This is supposed to be a on-the-  
19 record, and by that I mean written, these  
20 people are not allowed to come before the  
21 panel and plead their case. So we would have  
22 to be very careful about limiting the contact  
23 the petitioners have even if they have their  
24 names.

25 **DR. WADE:** I'm not proposing that we release

1 contact information. I'm not proposing that  
2 there is contact. I'm just saying that their  
3 names be out there. I think these people have  
4 a right, the public has a right to know who  
5 these review boards are, and who constitutes  
6 these review boards. But it's an issue --

7 **MS. HOMOKI-TITUS (by Telephone):** But in  
8 doing that you are opening them up to contacts  
9 that we don't want them to have. They're not  
10 allowed to have.

11 **DR. WADE:** They have to be instructed not to  
12 have contact.

13 **MS. HOMOKI-TITUS (by Telephone):** Right, so  
14 they would have to be instructed not to have  
15 contact, and I think it would probably come  
16 down to when these people can't, you know,  
17 it's sort of are you setting these petitioners  
18 up for more frustration because they're given  
19 names but now they're not allowed to speak  
20 with these people? So anyway, just a  
21 consideration.

22 **MR. CLAWSON:** There's another consideration,  
23 too. Let's make it clear, if you would have  
24 been sent some information that pertained to  
25 you or your family or whatever like that,

1                   wouldn't you like to be able to know who the  
2                   people were? That they were qualified to be  
3                   able to make these judgments that they were  
4                   doing? Or is it just some people out there in  
5                   Never-Never Land?

6                   **MS. HOMOKI-TITUS (by Telephone):** I think  
7                   their names are made public after the decision  
8                   is made.

9                               Aren't they, Larry, when the memo was  
10                   sent?

11                   **MR. ELLIOTT:** No.

12                   **DR. WADE:** No, not at this point. I don't  
13                   mind it being after the fact.

14                   **MS. HOMOKI-TITUS (by Telephone):** I thought  
15                   they were. I definitely wouldn't have a  
16                   problem with their names being made available  
17                   afterwards.

18                   **MR. ELLIOTT:** The problem with that is that  
19                   if some of these people return for the next  
20                   review.

21                   **DR. WADE:** Sure, there's a little bit of  
22                   variation. Well, if the work group wants to  
23                   speak, that's fine. If not, I mean, it's a  
24                   decision we can certainly make on our own.

25                   **DR. ROESSLER:** I'd like to kind of bounce

1 off of Brad's idea. If the petitioner knows  
2 the name and then knows that they are not  
3 permitted to contact this person, that's a  
4 sort of a frustrating situation. And I think  
5 maybe very good communication with the  
6 petitioner would be necessary to explain why  
7 they can't.

8 **DR. WADE:** Well, they can try, there's  
9 nothing that stops a petitioner from trying to  
10 contact these people. They're free to do  
11 that. The individual simply, the reviewer  
12 needs to know that they cannot accept  
13 information from petitioners, that's all.

14 **MS. BREYER (by Telephone):** I know occasions  
15 where I've had people -- or one case, I guess  
16 I should say -- where someone is asking for  
17 the name of the appeals panel that was  
18 reviewing a decision, and I don't know, you  
19 know, I don't want to be presumptuous, but I  
20 don't know if I would have told that person,  
21 given them the names and then said but you  
22 cannot contact them.

23 I think that person would have anyway  
24 because that's a person who typically  
25 inundates us with e-mails and phone calls as

1           it is. So I don't know if you'd be able to  
2           stop people who were determined if you give  
3           them the names beforehand.

4           **DR. LOCKEY:** If that panel is not supposed  
5           to review additional information, in this day  
6           and age I can essentially contact anybody I  
7           want to contact just by e-mail.

8           **MS. BREYER (by Telephone):** Right.

9           **DR. LOCKEY:** I mean, it's very easy to do  
10          that, and so if, in fact, there's supposed to  
11          be a barrier between that panel and the  
12          petitioner or the general public, and that is  
13          defined in the regulation, then the only way I  
14          know to keep that barrier in place is to  
15          maintain their confidentiality.

16          **MS. BREYER (by Telephone):** I agree.

17          **DR. LOCKEY:** But if that's not written in  
18          the regulation as such, it's not part of the  
19          regulation, then that perhaps is a different  
20          issue. I just don't know the regulation --

21          **DR. WADE:** Maybe I can read it.

22          **MS. HOMOKI-TITUS (by Telephone):** The  
23          regulation does not specifically say that the  
24          panel cannot be, the names of the panel cannot  
25          be made public. But the regulation does say

1           that the panel has to make their decision  
2           based on the information that was before the  
3           decision maker. So therefore, if they speak  
4           with someone who starts telling them about  
5           their case history and maybe other incidents  
6           that weren't involved, then you are  
7           influencing the panel. So therefore, you all  
8           can release the names, but you're not going to  
9           allow these people to talk to the petitioner  
10          or anyone else. They are to make their --

11          **DR. WADE:** Well, be careful of your words of  
12          who you're going to allow what to do. I mean,  
13          this has to be discussed. It's a policy call,  
14          and we'll make the policy call.

15          **MS. HOMOKI-TITUS (by Telephone):** But that's  
16          a legal call, Lew, whether or not they can see  
17          other information because that's not what our  
18          regulation --

19          **DR. WADE:** Whether they can see other  
20          information is one thing. Whether they can  
21          talk to people is a different issue. I mean,  
22          we'd have to be very careful about the --

23          **MS. HOMOKI-TITUS (by Telephone):** Yes,  
24          right, whether they can talk to people is a  
25          legal question.

1           **DR. WADE:** Okay, we'll work it out.

2           **DR. LOCKEY:** I think this is something that  
3 the, we'll have to work out internally with  
4 legal input on...

5           **MS. MUNN:** If the current process is working  
6 reasonably, I see no reason to change it. The  
7 concern is twofold; one, with respect to  
8 direct communication with these individuals  
9 which should not occur. But the other side of  
10 that coin is not just the names of the  
11 individuals but the qualifications of the  
12 individuals are important for the petitioner  
13 to know and understand. It seems that what's  
14 being done now appears to be working okay. I  
15 see no, do we have a reason to consider  
16 changing that at this juncture?

17           **DR. WADE:** Well, the issue's been raised,  
18 you know, by individuals so that's what  
19 triggers it. I think it's incumbent upon us  
20 though as public officials to decide how the  
21 public's business should best be done. So I  
22 think it's reasonable to consider the issue.

23           **MR. CLAWSON:** Well, and also we look at all  
24 the transparency that we have tried to do  
25 through this whole process and in everything



1           that we do. And then we get to a final  
2           appeals process, and it's like it's behind a  
3           closed door. That's my only issue is because  
4           people need, as Wanda said, to know the  
5           qualifications or so forth like these people  
6           really did understand the information that was  
7           looking at them and so forth.

8           **MR. ELLIOTT:** What are the qualifications  
9           that you feel the panel should be represented  
10          or should be portrayed in an explanation of  
11          the panel's, how it's constituted? I mean,  
12          the only qualification about the panel members  
13          given right at this point in time and has been  
14          given is that they are not involved in the  
15          program and have no involvement in this  
16          program whatsoever, and they report to Dr.  
17          Howard.

18                 So I'm curious to know what you would  
19          ask us to do about explaining qualifications  
20          because we could add to our letter of  
21          notification acknowledgement that the petition  
22          is going to be reviewed by the administrative  
23          appeal panel. We could say that the  
24          qualifications of the panel include --

25          **MS. MUNN:** The qualifications that you've

1           stated are perfectly adequate from my point of  
2           view. They're just, they indicate that these  
3           are individuals of substance who --

4           **MR. ELLIOTT:** Senior, senior officials who  
5           are not involved in the program.

6           **MS. MUNN:** Yeah, they clearly are  
7           individuals who can review the material that's  
8           set before them with some degree of authority.  
9           And that's, what you said about them from my  
10          perspective is more than adequate. It's quite  
11          fine.

12                 I just don't know how you set about  
13          explaining what we understand very clearly to  
14          the claimant which is that these people are  
15          charged with the responsibility of looking  
16          only at what our agency has already seen, and  
17          they're not an appeals panel in the sense that  
18          you may bring new information to them. I  
19          don't know how you go about explaining that to  
20          --

21           **MR. RUTHERFORD:** Well, I think one way we  
22          could explain it to the claimant is, is if  
23          they do have new information, that information  
24          should be provided to us, NIOSH, and we will  
25          re-evaluate the new information. Even a

1           petition that's been closed can be opened  
2           again.

3                   And new information, if new  
4           information comes up, in fact, we had a  
5           petition, and we were ready to make a  
6           recommended decision that, you know, we  
7           actually went through that process, and they  
8           provided new information. At the end we  
9           pulled back, the administrative closed, and  
10          put it back through the process again. So I  
11          think, you know --

12                **MR. ELLIOTT:** This is a comment, too, that  
13          appears in our correspondence with  
14          petitioners. We advise them that a petition  
15          can be re-opened, that new information can be  
16          submitted. I don't know that it appears as  
17          often, as frequently, as appropriately as it  
18          should. I think we can look at that and  
19          probably do a better job. I don't think that  
20          goes to solving Brad's issue.

21                **DR. WADE:** There's a fundamental conflict  
22          between doing the public's business openly and  
23          with complete disclosure, letting people know  
24          who the review panel is versus the negative  
25          side of creating pressure for those people or

creating an assumed pathway for information flow that really isn't there. And those two issues have to be weighed one against the other.

But there is a fundamental good in my opinion with, if you're going to say to people you can appeal this decision to a group of individuals and not identify those individuals, you are depriving them of a right to make judgments as to whether that's adequate in their opinion.

MS. MUNN: Yeah, but we're not, this group is not an appellate group. This group is a review group, an administrative overview of what the agency has already done. So for that reason I see no problem with what's being done now, and certainly since the final communications have been changed so that there is language, as Larry points out, very specifically saying you can re-open this any time. If you have new information, bring it back to us. That seems to cover the requirement from --

**DR. WADE:** That was a useful discussion.

**MR. ELLIOTT:** It may or may not be

1           important, but I would offer this, and Liz,  
2           correct me if I'm wrong, but the appeal from  
3           the petitioner on a denied petition for, that  
4           won't make it to evaluation, goes to the  
5           Director of NIOSH. The appeal doesn't go to  
6           this panel. It goes to the Director of NIOSH.  
7           And the Director of NIOSH turns and identifies  
8           a panel of his choice.

9                       And so it's, in my opinion, ultimately  
10          the Director of NIOSH's decision on to name  
11          the members of the panel publicly or not. But  
12          be that as it may, I just want you to  
13          understand it goes to the Director of NIOSH.  
14          It does not go to this panel. The Director of  
15          NIOSH could look at it himself and say, well,  
16          you know, I don't know that I need to convene  
17          a panel. I can see the record here, and I  
18          think this doesn't qualify, or I think it does  
19          qualify, and he can send it back to me and  
20          make it happen.

21          **DR. WADE:** Well, I mean, the rule does have  
22          some specificity as to the three-member panel.  
23          I mean, it's all laid out. I mean, I have the  
24          rule in front of me. We could read through  
25          it. It's all quite clear.

1           **MR. ELLIOTT:** But it does come to the  
2 Director.

3           **DR. WADE:** It comes to the Director, and the  
4 Director then appoints three HHS personnel  
5 appointed by the Director of NIOSH, who are  
6 not involved in developing the proposed  
7 finding. Will complete review within 30 days.  
8 So it specifies, there's a lot of specificity  
9 in it. The one fundamental debate is  
10 transparency at what price, and you know, it  
11 is the Director of NIOSH's call, and he'll  
12 make it. But I was curious as to the work  
13 group's thoughts on it.

14          **MR. CLAWSON:** It's like everything is kind  
15 of split.

16          **MS. MUNN:** I think it's working.

17          **DR. WADE:** I didn't mean to waste time.

18          **MS. BREYER (by Telephone):** I may have  
19 missed this comment. I was having some phone  
20 difficulty and had to plug in a charger. But  
21 I think looking at these points, the first  
22 point about the working group urging that the  
23 appeal process be completed within 30 days. I  
24 think the person who can get to achieving  
25 that, I hear more complaints on my end about

1 people complaining about the timeframe more so  
2 than I do wanting to know who's doing the  
3 appeal. So if I was to look at which one I  
4 believe would bother more people, from what I  
5 hear from petitioners that would be a bigger  
6 issue.

7 **DR. LOCKEY:** Lew, let me ask you one  
8 question about our discussion. If one of the  
9 panel members or all the panel members are  
10 being lobbied or e-mailed or contacted about a  
11 particular petition and are being provided  
12 information, not that they're choosing to  
13 accept it, but it comes their way, does that,  
14 would that disqualify them then from looking  
15 at that?

16 **MS. BREYER (by Telephone):** I'm sorry. I  
17 think some of that question got broken up.  
18 Could you repeat it?

19 **DR. LOCKEY:** Yeah, my question would be is -  
20 - this is Jim Lockey -- my question would be  
21 in this review panel if their names were  
22 publicized, it's easy to contact them just  
23 through the web, okay? And they receive  
24 information that is not part of the original  
25 review process. Now they can say, well, I

1           can't look at this information. I can't read  
2           it. I doubt whether in fact that would take  
3           place. Would that put that particular review  
4           person in a conflict of interest from actually  
5           reviewing that SEC petition? Would they  
6           automatically have a conflict at that point?

7           **DR. WADE:** See, we have to go back to the  
8           rule. I mean, I don't think the rule in any  
9           way speaks to information being provided to  
10          these reviewers. What the rule basically says  
11          is that the request may not include any new  
12          information or documentation that was not  
13          included in the completed petition. That's  
14          all it says on the issue. I don't think it  
15          excludes NIOSH providing information to the  
16          panel.

17                 As a matter of fact, the way it's  
18          written -- but those are judgments that we  
19          would have to make. And if we were to feel  
20          that either the spirit or the letter of the  
21          process was compromised by an information  
22          dump, then I think we would take action.  
23          Again, whether that's going to happen  
24          frequently or not I don't know. It's all  
25          about transparency versus the problems that



1           come with transparency.

2           **MS. HOWELL:** And one thing that I would  
3 point out is just that if you were to release  
4 the names obviously when these panels are  
5 convened they're not necessarily always the  
6 same three people. And a lot of times it has  
7 to do with their availability. So then you  
8 also get into the issue of if you release the  
9 names and you have various petitioners who may  
10 talk to each other and realize they have  
11 different people on their panel.

12           That could create problems as well  
13 with people feeling that, you know, one panel  
14 was returned with the recommendation of  
15 qualified versus another that was where the  
16 denial was sustained by two different panel  
17 groups. I just think that there's a lot of  
18 different issues you have to consider here.

19           **DR. LOCKEY:** I would propose that this is a  
20 working group. We discussed it, but I think  
21 you need to resolve this.

22           **DR. WADE:** I might have been remiss in  
23 raising it, but it was an interesting  
24 discussion. It goes to sort of fundamental  
25 value, and it sort of cuts --

1           **MR. ELLIOTT:** The appeal panel is part of  
2 this process. I don't think it was out of  
3 line.

4           **DR. WADE:** But it triggers all kinds of, if  
5 we don't have our act together obviously; and  
6 therefore, when we don't have our act together  
7 it looks bad when we debate ourselves in front  
8 of you guys.

9           **DR. LOCKEY:** I think that what you need to  
10 look at is, from my perspective, is what are  
11 the consequences if additional information is  
12 given to the review panel. What are the  
13 consequences based on how the rule is written?  
14 Is that considered a conflict of interest at  
15 that point? Has it been compromised or not  
16 compromised?

17           **DR. WADE:** I think that --

18           **MS. MUNN:** Yes, it's in contradiction to the  
19 rule. The rule clearly states thou shalt not.

20           **DR. WADE:** What does the rule say?

21           **MS. MUNN:** I said additional information was  
22 in conflict to the rule. Additional  
23 information being given to the panel is in  
24 conflict to the rule.

25           **DR. WADE:** I don't read that. It speaks to,

1 the request may not include new information.  
2 That's all it says. It doesn't --

3 **MR. ELLIOTT:** The appeal request.

4 **DR. WADE:** The appeal request may not  
5 include new information.

6 **MS. HOMOKI-TITUS (by Telephone):** I can give  
7 you the exact language. It says, "Petitioners  
8 must specify why the proposed finding should  
9 be reversed based on the petition requirements  
10 and on the information that the petitioners  
11 had already submitted. The request may not  
12 include any new information or documentation  
13 that was not included in the completed  
14 petition."

15 **DR. WADE:** Right, that's what it says, yeah.

16 **MS. MUNN:** And that's what goes to the  
17 panel.

18 **DR. WADE:** Other things could go to the  
19 panel. I mean, you know, it doesn't, the  
20 issue of whether or not NIOSH could have  
21 provided panel members other information isn't  
22 clearly answered by that statement.

23 **MS. HOMOKI-TITUS (by Telephone):** Lew's  
24 right. This statement clearly says that the  
25 petitioner may not provide any new

1 information, but that doesn't necessarily  
2 limit NIOSH providing new information.  
3 Although I think it has been interpreted in  
4 the past to mean that the panel's supposed to  
5 be looking at the record as it stood.

6 **DR. WADE:** And I think that's a fair  
7 judgment as a matter of fact.

8 **MR. ELLIOTT:** And we have not to date given  
9 any new information that a petitioner was not  
10 aware of.

11 **DR. WADE:** And I support that. When you  
12 look at what the rule holds you to, it doesn't  
13 preclude that. It'll be fine. We'll work it  
14 out, and the Director will have to make a  
15 complex decision.

16 **IMPROVEMENT SUGGESTIONS**

17 **DR. LOCKEY:** Let's move on then. Is Denise  
18 on the phone?

19 **DR. ROESSLER:** Don't we need a break?

20 **DR. LOCKEY:** Let's take a five-minute, we'll  
21 take a five-minute break here, Laurie, if  
22 that's all right with you.

23 **MS. BREYER (by Telephone):** Okay.

24 **DR. LOCKEY:** And then we'll, if you've had a  
25 chance to go through the fax that we sent you

1 and comment on it, additions or deletions, and  
2 we will discuss that. But we'll take a five-  
3 minute break first. Thanks.

4 (Whereupon, a break was taken from 10:25  
5 a.m. until 10:35 a.m.)

6 **DR. LOCKEY:** Welcome.

7 **MS. BROCK (by Telephone):** Hi, how are you?

8 **DR. LOCKEY:** Nice to hear your voice.  
9 Thanks for joining us. We appreciate it.

10 **MS. BROCK (by Telephone):** Thank you for  
11 having me. I'm sorry I was late. I was  
12 assuming it was ten o'clock my time, and I did  
13 have a hospital appointment today, and as soon  
14 as I got in the door, my toll free line was  
15 ringing with appointments.

16 **DR. WADE:** Well, we moved up the time,  
17 Denise, so you are not at all late.

18 **DR. LOCKEY:** We're moving ahead and we're  
19 trying to get our working group work done, and  
20 maybe this working group can be sunsetted  
21 after today.

22 Laurie, are you on the phone?

23 **MS. BREYER (by Telephone):** I am.

24 **DR. LOCKEY:** Denise, did you get a copy of  
25 the, of our draft recommendations from

1 November 9<sup>th</sup>?

2 MS. BROCK (by Telephone): I did not.

3 DR. WADE: So I was under the impression  
4 that you and Laurie were together. I'm sorry.  
5 Do you have a fax number or fax we can --

6 MS. BROCK (by Telephone): I certainly do.  
7 It is -- are you ready?

8 DR. WADE: Yes.

9 MS. BROCK (by Telephone): It is 6-3-6-2-8-  
10 1-6-3-7-4.

11 DR. WADE: 6-3-6-2-8-1-6-3-7-4?

12 MS. BROCK (by Telephone): Yes.

13 DR. WADE: I'm on my way, but I need a copy  
14 of the letter.

15 DR. LOCKEY: I'll go through the four things  
16 so you understand what we're going to add.  
17 What we generated November 9<sup>th</sup> was original  
18 draft recommendations as to how to make the  
19 SEC petition process more user friendly.  
20 Based on the morning meeting, we came up with  
21 an additional four recommendations. I can  
22 review those with you now while this fax is  
23 being taken care of.

24 MS. BROCK (by Telephone): Okay.

25 DR. LOCKEY: One was a clear explanation as

1 to why an SEC petition did not qualify. And  
2 the explanation should be written in language  
3 that the petitioner would understand. And  
4 also with that should be support documentation  
5 within the NIOSH file as to why that  
6 particular petition did not qualify.

7 The third thing would be, and this is  
8 what I think you're already doing, a close out  
9 personal communication session with the  
10 petitioner after they receive their final  
11 letter in regard to their petition that was  
12 denied. The purpose of that close out  
13 communication was to try to explain the  
14 reasons the petition was denied and be able to  
15 answer questions, so a close out personal  
16 session.

17 And then we have a fourth  
18 recommendation was that bringing on board both  
19 yourself as well as Laurie was going to be a  
20 tremendous help to this overall process, and  
21 it's going to make it much more petitioner  
22 friendly. And we're thoroughly supportive of  
23 that process.

24 So those are the four additional  
25 things that will not be on the fax that

1                    hopefully you will receive in the next moment  
2                    or so.

3                    **MS. BROCK (by Telephone):** Somehow I missed  
4                    the first one. The second one you said the  
5                    reasons why it didn't qualify, and the third  
6                    was basically the close out personal  
7                    communication interview with the petitioner,  
8                    and then the fourth one would be Laurie and  
9                    myself. What was the first one again? For  
10                   some reason I didn't --

11                   **DR. LOCKEY:** The letter that goes out --

12                   **MS. BROCK (by Telephone):** The letter.

13                   **DR. LOCKEY:** -- that denies the petition,  
14                   and it should be clearly explained as to why  
15                   the petition has been denied in petitioner-  
16                   friendly language.

17                   **MS. BROCK (by Telephone):** Okay.

18                   **DR. LOCKEY:** Not legalese language but  
19                   something that I would understand or I've read  
20                   some of the letters, and I have to read them  
21                   three or four times before I understand it.  
22                   So I'm not saying to make it more friendly in  
23                   that, but at least friendly on my level.

24                   **MS. BROCK (by Telephone):** I sure felt that  
25                   it was very helpful with the petitioners that



1 Laurie and Bomber and myself were on recently  
2 when we were talking about why it didn't  
3 qualify. I thought it went very well, so I  
4 think that that actually helped.

5 **DR. LOCKEY:** Laurie?

6 **MS. BREYER (by Telephone):** Yes.

7 **DR. LOCKEY:** Do you want to start, and then  
8 we can start through this process and Denise  
9 will have the draft I think relatively  
10 quickly.

11 **MS. BROCK (by Telephone):** Yeah, it's coming  
12 through for me now.

13 **MS. BREYER (by Telephone):** Would you like  
14 me to start with going over these bullet  
15 points as kind of an overview of some of the  
16 issues that, you know, I hear or have seen?

17 **DR. LOCKEY:** Why don't you start with the  
18 issues you've heard about first and then go  
19 through the bullet points?

20 **MS. BREYER (by Telephone):** I get a wide  
21 variety of calls I would say. I do get  
22 individuals who already might have the SEC  
23 petition form, and that's not clear to them,  
24 and so they have questions about how to fill  
25 out the form. I get individuals who don't

1 even know what the SEC process is so they may  
2 have just heard the term SEC and want to find  
3 out more information. So they're not really  
4 to that point where they're having difficulty  
5 with the process so they just want to find out  
6 more information about what the SEC is and how  
7 to go about potentially filing an SEC  
8 petition.

9 I also get calls from people who are  
10 currently petitioners, and they have questions  
11 about a letter they received or anything else  
12 that they might have a question about in  
13 general. For instance, what's the next step  
14 in the process because it can be a lengthy  
15 process with the qualification stage, the  
16 evaluation stage. Then they get the petition  
17 evaluation form, and they might call and say,  
18 okay, I don't exactly know what's going to  
19 happen next again.

20 And we'll go over the Advisory Board's  
21 role, their opportunity to speak to the  
22 Advisory Board, what happens after the  
23 Advisory Board, once they make a decision and  
24 then the Secretary and then the Congress and  
25 so forth, and we'll walk through that.

1 I also get a lot of calls about the  
2 Department of Labor's involvement in the SEC.  
3 And my vehicle for that is twofold. I'll  
4 sometimes get a call about people who want to  
5 know I just heard that an SEC class passed  
6 for, you know, Y-12. Am I going to qualify  
7 under that? And in those cases I refer them  
8 to the Department of Labor and try to explain  
9 to them the class definition and the SEC  
10 qualifications. You have 250 days aggregate  
11 and the 22 SEC cancers, then refer that on to  
12 the Department of Labor.

13 Or I get calls by people who thought  
14 they should have been in the class based on  
15 the class definition and maybe the Department  
16 of Labor told them they weren't in the class.  
17 So that's kind of a rough estimate of the type  
18 of calls I get. And I get the random calls  
19 about people who just don't understand the  
20 program, may not even have filed a claim, and  
21 have seen my name on the internet and just  
22 want to call and ask me what this whole, what  
23 the program is. So I get a wide range of  
24 calls, and I also call petitioners if I'm  
25 asked to.

1                   If like ORAU or LaVon have pointed out  
2 something that they think might be confusing,  
3 sometimes they'll e-mail me and ask me to  
4 contact a petitioner and speak with them. I  
5 also notify petitioners of working group  
6 meetings and Board meetings. So that's kind  
7 of the role that I play right now and kind of  
8 the broad group of questions that I get on a  
9 daily basis.

10                  My general comment about I think that  
11 would improve all of these type of questions  
12 is communication, and I think everybody talked  
13 about that at length this morning. But I  
14 think there's really three stages. There's  
15 the pre-petitioning process, and that's the  
16 stage where people have not filed a petition  
17 who might be thinking about it or they just  
18 have general questions about the SEC.

19                  Then there's the petitioning process  
20 which is people who have filed an SEC petition  
21 and just need help through that. And then I  
22 think there's the post-petitioning process,  
23 and that's maybe where people have questions  
24 about the appeals process and what's going on  
25 there. Or people, like I said, who just heard

1           that an SEC passed and want to know  
2           information about where they stand or what  
3           that means to their claim. So I think those  
4           are kind of the three stages.

5                       As far as the pre-petitioning stage, I  
6           think that part of what Denise and I are going  
7           to be doing are these SEC outreach meetings.  
8           The goal of those meetings are to go to  
9           facilities where someone might call us, you  
10          know, call Denise and myself and say, hey, we  
11          don't really understand the process. Maybe  
12          you can come and explain it to us. And so far  
13          we've had two requests, and Denise might get  
14          into this as well, one of those being at  
15          INEEL. And so we're going to try to do one of  
16          these meetings, SEC outreach meetings, at  
17          INEEL. I hope probably after the May Board  
18          meeting, soon after that.

19                      And then Denise got a request from  
20          somebody for Santa Susanna which is out in  
21          California. And so I think that might help  
22          with communication is getting out there and  
23          getting at kind of the grass roots level and  
24          explaining to people what this is , what it  
25          means. And part of the hard part is the SEC

1 obviously doesn't cover everybody, and I think  
2 there's a lot of miscommunication about that  
3 so I think that needs to get out there as  
4 well.

5 I think having access to Denise and  
6 myself, the more we can get that out there to  
7 people in the pre-petitioning process the  
8 better. I know since word has been getting  
9 out about my role I've been receiving a lot  
10 more calls. You know, some people who are  
11 filling out the forms and get to a section and  
12 they say I have no idea what this means, and I  
13 can walk through that with them.

14 Or people who, I've had people who've  
15 already gotten their petitions done and have  
16 sent it to me just to look at, you know, to  
17 say can you think of anything else I should  
18 add or if I should organize it differently  
19 before I submit it. And I think that's  
20 helpful to people because it gives them a  
21 starting point before they even feel like they  
22 have to submit it and then go through a  
23 process to have somebody that can help them  
24 before that.

25 And I think that more information on

1 the web, I think we should put, Chris Ellison  
2 and I have been talking about some  
3 communication measures for the web, for  
4 handouts to take to public meetings, whether  
5 they be Board meetings or meetings that Denise  
6 and I might go to.

7 And I should also clarify here that  
8 there are several meetings, like this Hanford  
9 meeting that we're at right now is to gather  
10 information from workers for a current SEC  
11 petition. So this is really more like a  
12 worker outreach meeting for the purposes of  
13 gathering information for a current SEC  
14 petition where the SEC outreach meetings that  
15 Denise and I are going to do are going to be  
16 more on the pre-petitioning phase, and they're  
17 going to be more SEC outreach meetings for  
18 people who have not filed a petition but are  
19 interested.

20 And then Denise and I are going to be  
21 going to Los Alamos next week, and that's not  
22 really going to be an SEC outreach meeting  
23 either. That was one where someone invited  
24 Denise and I to come out. So there's already  
25 a group of union members, representatives, who

1           have already organized the meeting, and  
2           they're just asking us to come out as guests  
3           to that. And so I foresee Denise and I  
4           fulfilling those types of roles as well.

5                       And then obviously those are  
6           communication areas that are in the pre-  
7           petitioning phase, and I think that fits in to  
8           get to the handout, bullet point number two,  
9           that NIOSH has considered auditing the  
10          audience in regard to the recognition of the  
11          availability of the SEC petition process. I'm  
12          not sure how we go about auditing the  
13          audience, but I think that's an interesting  
14          point.

15                      I think the potential SEC audience is  
16          huge because it can be anybody who has cancer  
17          or someone could file as a representative.  
18          They haven't had cancer, but they're filing on  
19          behalf of a class. So there could be some  
20          difficulties in auditing the audience, but I  
21          do agree that we need to get out more so that  
22          people do have a better knowledge of the  
23          petitioning process. And I think that these  
24          SEC outreach meetings can help with that.

25                      **DR. LOCKEY:** Perhaps a better term would be



1                   consider surveying the audience.

2                   **MS. BREYER (by Telephone):** Yes, I'm sorry?

3                   **DR. LOCKEY:** Maybe rather than audit,  
4                   surveying the audience.

5                   **MS. BREYER (by Telephone):** Right, and we  
6                   had talked about doing that on some other  
7                   communication issues so I think that it could  
8                   be an interesting approach to see what's out  
9                   there. I know that --

10                  **MR. ELLIOTT:** I didn't have any problems  
11                  with your language, should consider. I think  
12                  it offers us the opportunity to look at what  
13                  we might consider an audience to be. And I  
14                  think it's a segment of the overall audience.  
15                  I think maybe we can look at those people who  
16                  are contacting Laurie and Denise. And that  
17                  would be a segment of the audience, and we  
18                  could poll them, and we could understand  
19                  better. From that maybe we can make some  
20                  decisions about how to apply it on a broader  
21                  scale. We could define the audience  
22                  differently than that, of course. I found the  
23                  wording to be appropriate and welcomed it.

24                  **DR. LOCKEY:** Okay, go on, Laurie.

25                  **MS. BREYER (by Telephone):** And I also think

1           -- I kind of talked about the pre-petitioning  
2 phase. I think on the petitioners, once  
3 someone actually has filed a petition, we  
4 talked about some of the letters that can go  
5 out, and I'm working on phone calls as well,  
6 especially when there's a unique issue. We  
7 look at these as individual petitions. You  
8 know, every petition has or can potentially  
9 have something that's unique to that petition.  
10 I would say that's going to be the case in  
11 most of them. And I think the phone calls in  
12 those instances will help.

13           And also on this sixth bullet point on  
14 the handout that the letter should be reviewed  
15 and made more audience-friendly as well as the  
16 point that Dr. Lockey made to Denise this  
17 morning when he (unintelligible) points of a  
18 clear explanation of why they don't qualify  
19 and the supporting documentation. I think  
20 that's going to help in that phase. And  
21 again, I think access to Denise and I also  
22 will help petitioners in that phase of the  
23 process.

24           The post-petitioning process, and I  
25 don't know, there's not too much communication

1           that can go on except for explaining to people  
2           the appeals process if that's what they're  
3           calling about. Or they're calling about their  
4           qualification under the SEC that involves  
5           referral to the Department of Labor in that  
6           instance. But I do think that that also ties  
7           in with this last bullet point, consultation  
8           with NIOSH.

9                     I do have that Denise and I were in  
10           ORAU, and we listened in to some phone calls.  
11           And I know that's something that we're all  
12           striving to do, and I think they are all  
13           comprehensive and informative. I think as  
14           Denise and I mentioned, the last few calls  
15           that we participated in it just has really  
16           turned around, I think, the view of the  
17           petitioner who might have had a negative view  
18           coming in or a misunderstanding coming in  
19           because I think that's a really important  
20           point, that eighth one, with these phone  
21           calls.

22                     So that's kind of the overview of my  
23           comments on the communications, and what I  
24           hear from the claimants, and how I think that  
25           fits in with the bullet points, especially the

1 second, the sixth and the eighth bullet point  
2 on here.

3 **DR. LOCKEY:** Comments?

4 **DR. ROESSLER:** I have a comment. My  
5 reaction right now is that this Breyer-Brock  
6 team is really a positive in this whole  
7 program. Of course, we all know communication  
8 is really the key to everything. And I look  
9 at Laurie's academic background and her  
10 knowledge of the SEC process. And I think the  
11 Board has been familiar with her communication  
12 skills, and she's very forward thinking. I  
13 think this is a real good effort to have come  
14 about. And then with Denise's experience with  
15 workers, I think this is a real good team.

16 **MS. BREYER (by Telephone):** Thank you. I  
17 really like that, the Breyer-Brock team.

18 **MS. BROCK (by Telephone):** Yeah, I like  
19 that, too, B and B. It sounds pretty good  
20 doesn't it, Laurie?

21 **DR. ROESSLER:** I had to look up your new  
22 name on the internet, and then I saw that we  
23 have the two Bs here.

24 **DR. WADE:** I just wouldn't give up top  
25 billing so easily, Denise.

1           **DR. LOCKEY:** Laurie, do you have, is there  
2 any changes you would make in our Board points  
3 or additions you would make beyond what we  
4 already talked about this morning, the four  
5 additions that were put to these?

6           **MS. BREYER (by Telephone):** I think the  
7 Board, the working group and everybody that's  
8 just sitting in this meeting have a pretty  
9 well, good understanding, I believe of the  
10 issues so I think it really does boil down to  
11 communications. And I think the letters, I  
12 think the phone consultation calls that we do  
13 or even just in our everyday phone  
14 communication that we try to make that as  
15 understandable as possible. And that we try  
16 to focus it on each individual petitioner  
17 which can be hard to do with the amount of  
18 work that comes in, but it should still be our  
19 goal.

20                   You know, we might miss that mark  
21 sometimes unfortunately because of our work  
22 load, but I think our goal should always be to  
23 try to reach that mark of being as  
24 individually responsive to people as we can.  
25 And I think that is what I heard the working

1 group, I heard as kind of the meat of the  
2 working group's suggestions and what I read in  
3 these bullet points.

4 **DR. LOCKEY:** Thank you, and we appreciate  
5 your input.

6 Denise?

7 **MS. BROCK (by Telephone):** Yes.

8 **DR. LOCKEY:** Did you get a chance to review  
9 what we had, our draft from November 9<sup>th</sup>?

10 **MS. BROCK (by Telephone):** I did. I went  
11 over that as quickly as I could and was  
12 listening to Laurie at the same time. And I  
13 agree with Laurie. We actually get a variety  
14 of phone calls each day, and it does seem that  
15 since everything's on the bios or on the web  
16 page that my calls are increasing as well.

17 And as soon as I walked in the door  
18 this morning, the phone was ringing, and I had  
19 a call. And it actually was an issue with a  
20 claimant whose parent is deceased and had  
21 several siblings as well. And it was in  
22 reference to the Y-12 SEC. And I think Laurie  
23 may have gotten a few of these calls as well  
24 where there are some issues with the  
25 Department of Labor and how these cases are

1           actually being assessed with the 250 days and  
2           where they were actually placed at within the  
3           facility.

4                       So this claimant was very aggravated  
5           and thought that they belonged in a special  
6           exposure cohort. So they asked if they could  
7           e-mail me a letter that they had written, and  
8           I told them I'd be happy to take a look at  
9           that. Beyond that, again, I get a variety of  
10          calls from anywhere from somebody interested  
11          in filing an SEC.

12                      As Laurie said we've got someone that  
13          worked at Santa Susanna, also at Thomas  
14          International which as we looked was just a  
15          beryllium site. Laurie and I talked about  
16          that. She had found that it looked like it  
17          was originally designated as a Department of  
18          Energy. And then people that maybe call and  
19          say, well, if an SEC's approved, how does that  
20          affect my case.

21                      Maybe they have one of the 22 cancers,  
22          maybe they don't or even if they've been  
23          denied, then their concern is, well, I've been  
24          through dose reconstruction, but we matched  
25          the criteria. How will that affect my case?

1                   And so there's just a multitude of  
2                   calls and I think it's very helpful to have a  
3                   couple of different people to go to, and so I  
4                   think that it's very positive. And one of the  
5                   things that I thought was just amazing was the  
6                   calls that we've had with the NUMEC  
7                   petitioners because, as Laurie said to you,  
8                   sometimes folks can get a feeling of distrust  
9                   or think that it's such an adversarial  
10                  process.

11                 And I think that all of us bring  
12                 something different to the table, and we all  
13                 help each other, and I think it makes a very  
14                 good team. And I know in that particular case  
15                 with the petitioners, I feel that they're very  
16                 happy, very pleased. Bomber, you have to  
17                 include LaVon in that, too, because he worked  
18                 so hard on, and that was a unique situation as  
19                 well because there were actually two  
20                 petitions.

21                 Originally neither one had qualified  
22                 and since that time they've both qualified. I  
23                 think they're actually talking about merging  
24                 that into one. So the petitioners actually  
25                 feel very comfortable, and their trust factor



1           has increased. And I thought it was very  
2           helpful.

3           **MS. BREYER (by Telephone):** Well, I think  
4           from having someone like LaVon who has a  
5           technical background, obviously, I think the  
6           reason I can build a relationship with people  
7           as far as on the trust issues and background  
8           information by having someone like LaVon who  
9           gets on the call as well, and when someone  
10          brings up technical issues can answer those  
11          technical issues and be informed and  
12          knowledgeable about what's going on really  
13          helps in those situations.

14          **MS. BROCK (by Telephone):** He's kind, too,  
15          the way he, he makes it easy for them to  
16          understand, I mean, because a lot of it is  
17          very difficult, you know, but the way he  
18          speaks to them. I think that really,  
19          honestly, I think that makes a big difference  
20          with folks.

21          **MR. RUTHERFORD:** Thank you.

22          **MS. BROCK (by Telephone):** Everybody's  
23          laughing. Is LaVon usually not nice?

24          **MR. CLAWSON:** No, no, his head is swelling  
25          so much we're having to give him more room.

1                   No, LaVon does a very thorough job, and I've  
2                   told him many times when he's done processes,  
3                   he's a valuable asset to this.

4                   **DR. ROESSLER:** Denise, I have a question,  
5                   Gen Roessler. I was just looking at the  
6                   website, and I do like the bios for both you  
7                   and Laurie. You have a phone number listed.  
8                   I'm wondering if it would be helpful to you to  
9                   have your e-mail address listed so that you  
10                  could take these responses at your  
11                  convenience. I kind of figure with the phone  
12                  number people could contact you at any hour of  
13                  the day.

14                 **MS. BROCK (by Telephone):** And they do,  
15                 believe me. I've had calls at three and four  
16                 in the morning, and I just have to turn the  
17                 ringer off. And you're right; that would be a  
18                 very good idea. Because sometimes, just for  
19                 example, I believe Laurie had e-mailed  
20                 somebody to try calling me, and it was on that  
21                 toll free line, and obviously, I was tied up  
22                 with a claimant.

23                         So that probably would have been the  
24                         best thing was that if you couldn't get me,  
25                         and she did get me through my home phone which

1 was fine. But sometimes all three phones will  
2 ring at once, and then you've got e-mail  
3 coming in, too. So that probably would be a  
4 good idea.

5 **MS. BREYER (by Telephone):** Yeah, we could  
6 also, I know Denise was trying to get a CDC e-  
7 mail set up.

8 **MS. BROCK (by Telephone):** Uh-huh.

9 **MS. BREYER (by Telephone):** We can always  
10 put the ocas@cdc.gov e-mail for yours as well,  
11 and then have like Chris did the other day  
12 when somebody had sent an e-mail to you,  
13 forward it on --

14 **MS. BROCK (by Telephone):** Yeah, forward it.

15 **MS. BREYER (by Telephone):** -- to your  
16 personal account which is an option.

17 **MS. BROCK (by Telephone):** (Unintelligible)  
18 McCarthy does that for me as well. And I have  
19 people will fax or they'll call and say, well,  
20 what is your e-mail address, but I do notice a  
21 huge influx of calls. And I think, Laurie,  
22 you probably do, too, don't you now that  
23 that's on there. I've gotten several more  
24 phone calls actually. And you're right. They  
25 come in at all hours, day and night, doesn't

1           make any difference.

2                   And as far as the outreach meetings,  
3           Laurie's touched on that, too. As she said  
4           we've got a meeting in New Mexico, and then  
5           we've got INEEL and a lady had called actually  
6           interested in handling a petition for the  
7           Santa Susanna. And I expect we'll probably  
8           get more calls in reference to that because  
9           there are several people inquiring if, you  
10          know, like Fernald. Some people oddly enough  
11          don't even realize there's been a petition  
12          filed, and they'll ask about it. So I expect  
13          we'll get a lot more calls that way.

14                **MS. BREYER (by Telephone):** And I think  
15          another good thing is the Santa Susanna lab,  
16          if we go out there for that site. Wasn't that  
17          the site where we thought there might have  
18          been several other AWEs in the area that we  
19          could target all at once while we were out  
20          there? I think we had looked and there were  
21          several other labs or facilities in the area  
22          so we could go out there and it wouldn't  
23          necessarily, not just for Santa Susanna but,  
24          you know, other facilities in that area.

25                **MS. BROCK (by Telephone):** Right.

1           **DR. LOCKEY:** Very good. Comments? Any  
2 other comments from the working group or  
3 NIOSH?

4           **MR. ELLIOTT:** We're glad to have them on  
5 board.

6           **DR. WADE:** Well, I hate to add to this sort  
7 of love fest, but I feel obliged to make a  
8 comment. I think it's terribly important that  
9 we do all these mechanical things as well as  
10 we can. And no matter how well we do that,  
11 we'll always slip. The only thing that is our  
12 last line of defense really is that when our  
13 people fundamentally care about the people  
14 that they're serving. And in this case it's  
15 true it states from Bomber to Denise to  
16 Laurie. They care about the people they're  
17 serving; and therefore, they'll get the best  
18 of this that they can. But we appreciate your  
19 guidance in how to do it better, but we offer  
20 you our best when we offer you this team.

21           **DR. LOCKEY:** It all comes down to people,  
22 and when you have good people, the program  
23 will be a good program.

24           **MS. MUNN:** You are all marvelous, and Boomer  
25 is a saint.

1                   **MR. ELLIOTT:** You just got re-nicknamed.

2                   **DR. WADE:** It's getting a little silly here.

3                   **DR. LOCKEY:** Well, then to adopt something  
4 that Lew uses all the time, step forward, step  
5 forward. What I propose is that I will add  
6 the names from November 9<sup>th</sup> to that summary.  
7 And then I will put an additional page on this  
8 from today's meeting with the four additional  
9 recommendations that we have and send that out  
10 for the Board to review, give you a chance to  
11 comment on it and give it back to me. And  
12 then we will present that to the Board at our  
13 next meeting as it be formally adopted.

14                  **MR. CLAWSON:** It sounds good.

15                  **MS. MUNN:** Will that be on our April agenda  
16 for the phone call --

17                  **DR. WADE:** If we make it, that's next week.

18                  **DR. LOCKEY:** I'll have it out this  
19 afternoon.

20                  **DR. WADE:** Well, if so, we have room for it.

21                  **DR. LOCKEY:** I will have it out this  
22 afternoon because I'd like to get this working  
23 group, you know, at least we can say we have  
24 one working group that --

25                  **MR. CLAWSON:** You know, one thing I would

1           like to throw out with this worker outreach  
2           and stuff, it'd be nice to be able to know of  
3           some, you know, the ones that are coming up  
4           and so forth like that so that if we could  
5           participate or be able to listen or something  
6           like for us it gathers a lot of information  
7           for us and makes it nice for us to be able to  
8           perform our jobs a little bit better.

9           **MR. ELLIOTT:** We are, we heard you before on  
10          this Brad, and it's a very valid point that  
11          you make. And we have taken steps to make  
12          sure that Board members are notified of our  
13          activities that occur in their areas or the  
14          Board at large knows what's going on in case  
15          they want to participate. So I hope you're  
16          seeing these things come through now.

17          **MR. CLAWSON:** You are right. I saw it in  
18          Hanford and so forth like that, and you know,  
19          that's one being on that group I really would  
20          have liked to have attended. Unfortunately,  
21          we had some other things that came up, but and  
22          I do appreciate that.

23          **DR. WADE:** Well, I think we're done. Thank  
24          you very much for good work.

25          **DR. ROESSLER:** Good job.

1  
2  
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**DR. LOCKEY:** Thank you everybody.

**DR. WADE:** Thank you on the phone.

**MR. ELLIOTT:** All done for this working  
group.

(Whereupon, the meeting was adjourned at  
11:03 a.m.)



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**CERTIFICATE OF COURT REPORTER****STATE OF GEORGIA****COUNTY OF FULTON**

I, Steven Ray Green, Certified Merit Court Reporter, do hereby certify that I reported the above and foregoing on the day of March 28, 2007; I, Steven Ray Green, then transcribed the proceedings, and it is a true and accurate transcript of the testimony captioned herein.

I further certify that I am neither kin nor counsel to any of the parties herein, nor have any interest in the cause named herein.

WITNESS my hand and official seal this the 2nd day of August, 2007.

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**STEVEN RAY GREEN, CCR****CERTIFIED MERIT COURT REPORTER****CERTIFICATE NUMBER: A-2102**